

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

IN RE ABBOTT LABS NORVIR )  
ANTITRUST LITIGATION, )

No. C04-1511 CW (BZ)

This Document Relates to All )  
Actions. )

**FIFTH DISCOVERY ORDER**

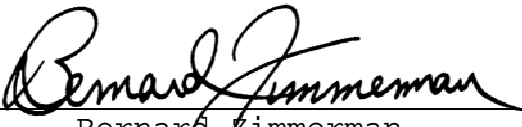
On August 8, 2007, I held a telephonic conference to discuss the discovery disputes outlined in the parties' August 1 and August 3 letters. All interested parties participated through counsel. The parties having agreed that no further briefing is required, I will treat defendant Abbott Laboratories's August 1 letter as constituting a motion to compel and a motion to alter expert report disclosure dates. On that basis, and for the reasons discussed during the conference, **IT IS HEREBY ORDERED** as follows:

1. On the representation by plaintiffs' counsel that their June 1, 2007 answers to defendant's interrogatories provided all factual information relating to the bases for its

1 patent invalidity arguments known by plaintiffs (excluding  
2 information developed by plaintiffs' expert) at that time, the  
3 motion is **DENIED**. I understand that it may assist defendant  
4 to learn of the information plaintiffs' expert has developed  
5 as early as possible, but its remedy was to advance the expert  
6 disclosure dates, not to subvert the disclosure process with  
7 contention interrogatories.

8 2. Defendant's motion to order the plaintiffs to submit  
9 the initial expert report on the issue of the validity of  
10 defendant's patents is **DENIED**. This does not appear to be a  
11 discovery dispute but, rather, a dispute about who has the  
12 burden of establishing the invalidity of the patents at trial.  
13 While I expressed my views during the conference, I believe  
14 that this ultimately needs to be decided by Judge Wilken.

15 Dated: August 8, 2007

16   
17 Bernard Zimmerman  
United States Magistrate Judge

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